MAJLIS BANDARAYA PULAU PINANG v. DATIN NOORZAINA MAT ZAIN & ANOR

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
MARY LIM JCA
HASNAH MOHAMMED HASHIM JCA
[CIVIL APPEAL NO: P-02(A)-2137-10-2017]
8 JANUARY 2019

CIVIL PROCEDURE: *Judicial review – Certiorari – Application to quash decision of local authority – Local authority revoked temporary permit to operate hotel – Temporary permit revoked due to rejection of landowner's application for change of use of building – Whether local authority's decision caused serious injustice to hotel owner – Whether in breach of rules of natural justice – Whether hotel owner given opportunity to be heard before decision to revoke temporary permit was made – Whether local authority took into account relevant considerations before arriving at decision – Whether hotel owner had legitimate expectation that temporary permit was never subject to approval of landowner's application*

CIVIL PROCEDURE: *Damages – Claim for – Local authority revoked temporary permit to operate hotel – Temporary permit revoked due to rejection of landowner's application for change of use of building – Whether hotel owner/claimant suffered damages – Whether hotel owner provided explanation for damages sought*

The Government of the State of Penang had implemented a policy which aimed at, *inter alia*, collecting fees from both licensed and unlicensed hotels in the State. It was decided that all existing hotels that had been operating without the requisite licenses would be given a moratorium. Since the response from hotel operators was discouraging, the State Government amended and varied the moratorium to grant, subject to conditions, temporary permits to such hotels, for a period of a year. The first respondent was the director of the second respondent, the owner and operator of a hotel known as 'Maritime Waterfront Suites' which occupied 60 units of a building where the appellant was the local authority. On 1 November 2015, the respondents were granted a temporary permit to operate the hotel till 31 October 2016. However, on 22 April 2016, the temporary permit was revoked by the appellant ('the appellant's decision') as the landowner's application, for a change of use of the building from 'commercial office' to 'commercial hotel' was rejected. The respondents applied for judicial review at the High Court, seeking (i) a *certiorari* order that the appellant's decision be quashed and/or set aside; and (ii) damage and 'constitutional compensation' to be paid by the appellant to the respondents, pursuant to the appellant's decision. Supporting their application, the respondents submitted that the appellant's decision (i) had occasioned a serious injustice to them as it was made in breach of the rules of natural justice; (ii) was unfair and an

abuse of discretion or power; and (iii) was disproportionate, irrational, improper, unreasonable and unconscionable as (a) the respondents were not given an opportunity to be heard before the appellant's decision was made; (b) the appellant had taken into account irrelevant considerations, including the ground that the landowner's application for change of use of land was rejected; and (c) there was a legitimate expectation that the temporary permit was never subject to the condition that the landowner's application must be approved during the validity of the temporary permit issued to the respondents. The appellant opposed the respondents' application and argued that the temporary permit (i) issued to the respondents did not fall under the moratorium policy but instead, pursuant to a decision of the State Committee on the moratorium policy; and (ii) was temporary and a privilege, not a right available under the Local Government Act 1976 or the Federal Constitution, and its revocation did not impinge any rights. The High Court granted the orders sought by the respondents and ordered that damages and constitutional compensation be assessed. Hence, the present appeal.

Held (allowing appeal in part)
Per Mary Lim JCA delivering the judgment of the court:

(1) Twelve terms and condition of the temporary permit were imposed by the appellant. Under the 11th condition, all that was required by the respondents was to, within one year, 'mengemukakan permohonan dan mendapat kelulusan merancang bagi tukar guna bangunan kepada premis hotel dan mematuhi syarat-syaratnya'. These words did not mean or infer that the respondent was to apply, and be successful in its application, for planning permission. The obligation of the respondents was in respect of having or taking the initiative of or taking steps towards applying and obtaining the planning approval. Since the respondents applied for the planning approval, the 11th condition was satisfied. The landowner's application was made on 13 August 2015 and it was for a change of building use from 'commercial' to 'hotel'. That application was made even before the moratorium policy was amended. Therefore, there was no breach upon which the appellant may claim any basis for revoking the temporary permit. (paras 44-45 & 47-48)

(2) The temporary permit was issued on payment of a sum required by the appellant and the sum was specified to be payment for a fixed period of validity. The respondents paid RM2,400 per year, which was ten times more than the minimum annual fee. Furthermore, having relied on the contents of the permit itself, which permit was validly issued by the appellant upon payment of fees by the respondents, the respondents were legitimately entitled to expect that the permit would live up to its contents. The appellant's decision was therefore wrong in law and on the facts. (paras 51, 52 & 54)

(3) The respondents had rightly, a legitimate expectation that there would be observance of procedural fairness accorded to them, that the appellant would act fairly by taking into consideration all relevant factors, after having taken up the appellant on its moratorium policy. The terms of the policy applied to the respondents. Even if there was any ambiguity, it must be resolved in the respondents' favour. Such doctrine is akin to the operation of estoppel, that while the policy may be changed from time to time, insofar as this policy was concerned, when it was changed, it was to extend to operators such as the respondents who have relied on them, paid the fees fixed by the appellant and issued the permit, which on the face of it, said what it said, that it was valid till 31 October 2016. (para 60)

(4) The High Court was right in its exercise of discretion in granting the order of *certiorari* to quash the appellant's decision. The appeal in respect of this part of the decision was dismissed. In their application for judicial review, the respondents had sought damages/constitutional compensation. The High Court Judge ordered that damages be assessed. However, the respondents were unable to provide any explanation on this relief. There was no basis for the grant of the order, especially since the respondents remained in the building and continued its operations until the expiration of the temporary permit. Under such circumstances, that part of the decision must be set aside. (paras 66 & 67)

Bahasa Malaysia *Headnotes*

Kerajaan Negeri Pulau Pinang telah melaksanakan satu polisi yang bertujuan, antara lain, memungut yuran daripada hotel-hotel yang berlesen dan tidak berlesen di negeri tersebut. Diputuskan bahawa semua hotel sedia ada, yang beroperasi tanpa lesen yang dikehendaki, akan diberi moratorium. Oleh kerana respon pengendali-pengendali hotel kurang menggalakkan, Kerajaan Negeri meminda dan mengubah moratorium agar memberi, tertakluk pada syarat-syarat, permit sementara kepada hotel-hotel ini, untuk tempoh setahun. Responden pertama ialah pengarah responden kedua, pemilik dan pengendali sebuah hotel yang dikenali sebagai 'Maritime Waterfront Suites' yang memenuhi 60 unit bangunan di mana perayu ialah pihak berkuasa tempatan. Pada 1 November 2015, responden-responden diberi permit sementara untuk mengendali hotel hingga 31 Oktober 2016. Walau bagaimanapun, pada 22 April 2016, permit sementara ini dibatalkan oleh perayu ('keputusan perayu') kerana permohonan pemilik tanah, untuk menukar penggunaan bangunan daripada 'pejabat komersial' menjadi 'hotel komersial' ditolak. Responden-responden memohon satu semakan kehakiman di Mahkamah Tinggi, memohon (i) perintah *certiorari* agar keputusan perayu dibatalkan dan/atau diketepikan; dan (ii) ganti rugi dan 'pampasan berperlembagaan' dibayar oleh perayu kepada responden-responden, susulan keputusan perayu. Menyokong permohonan mereka, responden-responden menghujahkan keputusan perayu (i) menyebabkan

ketidakadilan serius kepada mereka kerana dibuat bercanggah dengan peraturan-peraturan keadilan asasi; (ii) tidak adil dan satu salah guna budi bicara atau kuasa; dan (iii) tidak seimbang, tidak rasional, tidak teratur, tidak munasabah dan tidak berpatutan kerana (a) responden-responden tidak diberi peluang didengar sebelum keputusan perayu dibuat; (b) perayu telah mengambil kira pertimbangan-pertimbangan tidak relevan, termasuk alasan bahawa permohonan pemilik tanah untuk penukaran penggunaan tanah ditolak; dan (c) terdapat jangkaan munasabah bahawa permit sementara ini tidak pernah tertakluk pada kemestian kelulusan permohonan pemilik tanah semasa kesahan permit sementara dikeluarkan kepada responden-responden. Perayu membantah permohonan responden-responden dan menegaskan permit sementara (i) yang dikeluarkan kepada responden-responden tidak terangkum bawah polisi moratorium tetapi, sebaliknya, bawah keputusan Jawatankuasa Negeri berkenaan polisi moratorium; dan (ii) bersifat sementara dan satu keistimewaan, bukan satu hak yang tersedia bawah Akta Kerajaan Tempatan 1976 atau Perlembagaan Persekutuan, dan pembatalannya tidak mencabul apa-apa hak. Mahkamah Tinggi membenarkan perintah-perintah yang dipohon oleh responden-responden dan memerintahkan agar ganti rugi dan pampasan berperlembagaan ditaksir. Maka timbul rayuan ini.

Diputuskan (membenaran sebahagian rayuan)
Oleh Mary Lim HMR menyampaikan penghakiman mahkamah:

(1) Terdapat 12 terma dan syarat dalam permit sementara yang dikenakan oleh perayu. Bawah syarat ke-11, responden-responden hanya perlu, dalam masa setahun, 'mengemukakan permohonan dan mendapat kelulusan merancang bagi tukar guna bangunan kepada premis hotel dan mematuhi syarat-syaratnya'. Perkataan-perkataan ini tidak bermaksud atau menyiratkan bahawa responden-responden perlu memohon, dan berjaya dalam permohonan mereka, untuk kelulusan perancangan. Kewajipan responden-responden ialah berkenaan mempunyai atau mengambil inisiatif atau langkah-langkah ke arah memohon dan memperoleh kelulusan perancangan. Oleh kerana responden-responden telah memohon kelulusan, syarat ke-11 sudah dipenuhi. Permohonan pemilik tanah dibuat pada 13 Ogos 2015 dan ini ialah untuk penukaran penggunaan bangunan daripada 'komersial' ke 'hotel'. Malahan, permohonan ini dibuat sebelum polisi moratorium dibuat. Oleh itu, tiada pelanggaran oleh perayu yang membolehkan perayu mendakwa terdapat apa-apa asas untuk membatalkan permit sementara.

(2) Permit sementara dikeluarkan berdasarkan bayaran jumlah yang dikehendaki oleh perayu dan jumlah tersebut dinyatakan sebagai bayaran untuk tempoh tetap kesahan. Responden-responden membayar RM2,400 setahun, iaitu lebih sepuluh kali ganda yuran tahunan minimum. Tambahan lagi, selepas bergantung pada kandungan permit

tersebut, yang permitnya dikeluarkan secara sah oleh perayu selepas responden-responden membayar yuran, responden-responden berhak, secara sah, menjangka bahawa permit akan mengotakan kandungannya. Keputusan perayu salah bawah undang-undang dan berdasarkan fakta.

(3) Responden-responden, dengan betul, mempunyai jangkaan sah bahawa mereka akan diberi keadilan tatacara, bahawa perayu akan bertindak adil dengan mengambil kira faktor-faktor relevan, selepas mengambil polisi moratorium perayu. Terma-terma polisi terpakai pada responden-responden. Jika pun terdapat kesamaran, ini mesti diselesaikan memihak pada responden-responden. Doktrin begini serupa dengan pemakaian estopel, iaitu walaupun polisi boleh diubah dari masa ke masa, setakat polisi ini adalah berkenaan, apabila diubah, polisi terpakai pada pengendali-pengendali seperti responden-responden yang telah bergantung padanya, membayar yuran yang ditetapkan oleh perayu dan mengeluarkan permit yang, pada dasarnya, mengatakan apa yang dikatakan, iaitu polisi sah hingga 31 Oktober 2016.

(4) Mahkamah Tinggi bertindak betul dalam menjalankan budi bicara membenarkan perintah *certiorari* untuk membatalkan keputusan perayu. Rayuan terhadap bahagian keputusan tersebut ditolak. Dalam permohonan semakan kehakiman, responden-responden memohon ganti rugi/pampasan berperlembagaan. Hakim Mahkamah Tinggi seterusnya memerintahkan agar ganti rugi ditaksir. Namun begitu, responden-responden tidak dapat memberi apa-apa penjelasan untuk relief ini. Tiada asas untuk membenarkan perintah, khasnya kerana responden-responden kekal di dalam bangunan dan meneruskan operasinya hingga luputnya permit sementara. Berdasarkan hal keadaan demikian, bahagian keputusan tersebut diketepikan.

Case(s) referred to:

Abdul Ghani Che Mat v. Pengerusi Suruhanjaya Pasukan Polis & Ors [2017] 3 CLJ 399 CA ***(refd)***

Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374 ***(refd)***

Government of the State of Sarawak v. Lah Anyie & Ors [2013] 6 CLJ 133 CA ***(refd)***

Law Pang Ching & Ors v. Tawau Municipal Council [2010] 2 CLJ 821 CA ***(refd)***

Ngiam Geok Mooi v. Pacific World Destination East Sdn Bhd [2016] 6 CLJ 395 CA ***(refd)***

Pembinaan Batu Jaya Sdn Bhd v. Pengarah Tanah dan Galian, Selangor & Anor [2016] 5 CLJ 250 CA ***(refd)***

Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

The State Government of Sabah v. Sipadan Dive Centre Sdn Bhd & Ors [2013] 5 CLJ 107 CA ***(refd)***

Legislation referred to:

Local Government Act 1976, ss. 9(1), 72, 102(s), 107(2), (3), (4)

Town and Country Planning Act 1976, ss. 4(5), 23(1)(a)

For the appellant - Karin Lim Ai Ching, Murgan D Maniam & Cyrus Lim Kia Chun; M/s Presgrave & Matthews
For the respondents - Ong Yu Shin & Marcia Geraldine Lopez; M/s The Chambers of Yu Shin Ong

[Editor's note: For the High Court judgment, please see Datin Noorzaina Mat Zain & Anor v. Majlis Bandaraya Pulau Pinang [2006] 4 CLJ 103 (overruled in part).]

Reported by Najib Tamby

JUDGMENT

Mary Lim JCA:

[1] The High Court granted the respondents' application for judicial review in respect of the appellant's decision to revoke the respondents' permit to run a lodging house. On appeal, we unanimously affirmed that part of the decision but set aside the order that the appellant was to pay general damages and constitutional damages to the respondents. The award of damages was to be assessed by the Senior Assistant Registrar. These are our reasons.

Factual Background

[2] At the end of 2013, the Government of the State of Penang decided to implement what is known as the "Local Government Collection of Fees Policy". The object of this policy, *inter alia*, was to collect fees from both licensed and unlicensed hotels in the State, and to control such hotels. Thus, it was also decided that all existing hotels that had been operating without the requisite licences under the relevant laws, would be given a moratorium, valid for the period from March 2014 to 30 September 2014.

[3] Apparently, there were these hotels in the State of Penang that had been in operation but were actually unlicensed; substantially because of the failure to obtain the necessary planning permission, change or conversion in land use, approval of building plans, zoning or rezoning and a whole host of other reasons, the details of which are not relevant for this appeal. Under this original moratorium, temporary permits would be issued by the relevant local authority and during this interim period, the unlicensed operators were required to get their "house in order", that is, to obtain the necessary approvals, permissions, and apply for permanent hotel licences.

[4] According to the appellant, the response from the hotel operators was not encouraging. So, the State Government, through the State Committee on the moratorium policy on hotels without licence decided to amend and vary that original moratorium. It decided to now grant, subject to conditions, temporary hotel permits to such hotels, for a period of one year. This amended and varied moratorium policy was valid and implemented from 1 November 2014 to 31 October 2015.

[5] This amended and varied moratorium policy was subsequently extended for another year, with conditions. A statement to that effect was issued on 2 October 2015 by the State Government, through the executive councilor in charge of local government, traffic management and flood mitigation.

[6] The second respondent was one such operator. Previously known as "Autumn Star Sdn Bhd", it is the owner and operator of a lodging house (hotel) called "Maritime Waterfront Suites". This hotel, occupies 60 units within Block B of a building known as "The Maritime". The first respondent is one of its directors. The developer of The Maritime or "The Maritime Piazza", as the whole development was called, was Jelutong Development Sdn Bhd. The appellant is the local authority, as defined under the Local Government Act 1976 [Act 171], for the city of Penang, where The Maritime is located. The respondents decided to take advantage of the amended and varied moratorium policy. On 1 November 2015, it was granted a temporary permit to operate the hotel from 1 November 2014 to 31 October 2016.

[7] On 22 April 2016, that temporary permit was revoked with immediate effect. According to the letter conveying the appellant's decision, it was because the landowner, Jelutong Development Sdn Bhd's application for a change of use of the building from 'commercial offices' to 'commercial hotel' had been rejected on that same date.

[8] The respondents challenged that revocation by way of an application for judicial review and seeking the following primary reliefs:

(i) an order for *certiorari* that the appellant's decision on 22 April 2016 to revoke the temporary lodging house permit dated 1 November 2015 with Serial No. A00984 be quashed and/or set aside;

(ii) an order of *mandamus* that the appellant is required to reinstate the temporary lodging house permit dated 1 November 2015 with Serial No. A00984;

(iii) damage and 'constitutional compensation' to be assessed by the Honourable Court and to be paid by the appellant to the respondents pursuant to the said decision.

[9] The application for the order for *mandamus* was abandoned as the licence in question had expired by the time the matter came up for disposal before the High Court. Three intervenors, owners of some affected units who were allowed to intervene subsequently withdrew their participation in the proceedings.

[10] The respondents complained that the revocation of the temporary permit had occasioned a serious injustice to them as it was made in breach of the rules of natural justice. The respondents further complained that the

revocation was unfair and an abuse of discretion or power, that the appellant's decision was disproportionate, irrational, improper, unreasonable and unconscionable for the following reasons:

(i) they were not given an opportunity to be heard prior to the making of the impugned decision;

(ii) the appellant had taken into account irrelevant considerations including the ground that Jelutong Development Sdn Bhd's application for change of use of land from "commercial offices" to "commercial hotel" was rejected on 19 April 2016;

(iii) there was a legitimate expectation that the temporary permit was never subject to the condition that Jelutong Development Sdn Bhd's application must be approved during the validity of the temporary permit issued to the respondents.

[11] In opposing the application, the appellant maintained that the temporary hotel permit granted to the respondents was temporary and a privilege; and, that it was not a right available under Act 171 or the Federal Constitution. Consequently, its revocation did not impinge on any rights, be it under Act 171 or the Federal Constitution. The appellant further argued that the temporary hotel permit that was issued to the respondents did not fall under the moratorium policy, but pursuant to a decision of the State Committee on the moratorium policy made on 27 October 2015. The learned judge was thus said to have fallen into error in his considerations.

[12] This was how the appellant pitched its submissions. As a local authority, it was empowered under Act 171 and the Street, Drainage & Building Act 1974 [Act 133], to regulate and licence lodging houses and hotels. For that purpose, it has wide powers including the power to impose conditions and restrictions as it thinks fit and without assigning any reasons therefor (ss. 107(2) and (3) of Act 171).

[13] In exercise of its powers under s. 9(1) of Act 171 to give directions of a general character to the local authority, which includes the appellant, the State Authority, that is the State Government of Penang had, in 2014, implemented a moratorium policy on hotels without licence.

[14] Under this moratorium policy, the State Government will issue temporary permits for unlicensed hotels. This allowed the Government to control their operation "without giving a negative impact to the tourism industry in Penang" whilst allowing the operators, time to submit the necessary applications for planning, change of use, conversion, building plan or rezoning, wherever applicable; as well as apply for permanent hotel licences.

[15] The response to the policy was said to be "not encouraging". At a meeting on 26 February 2015, the State Planning Committee (SPC) decided to waive the requirement of obtaining planning permission, requiring instead

only a building plan to be submitted. The State Government then decided that the policy would be implemented from 1 November 2014 to 31 October 2015.

[16] According to learned counsel for the appellant, there were 191 hotels registered under the moratorium policy. Only these 191 registered operators forming category or list 1 would be issued temporary hotel permits for a period of one year and would benefit from the SPC's decision. The respondent was said to be not one of the 191 operators, or operators in category or list 1.

[17] On 2 October 2015, the executive councillor of the State Government in charge of local government, traffic management and flood mitigation issued a statement on the moratorium policy to the effect that subject to conditions, the policy will be extended for another year. According to the appellant, this was meant for the hotel operators who were registered but who had yet to submit their building plans to the appellant after the expiry of the moratorium period on 31 October 2015. These operators formed category two or list 2, and the temporary hotel permits of these operators were extended for another term of one year. The appellant submitted that the respondents were also not in this category.

[18] On 27 October 2015, the State Committee on the Moratorium Policy made several announcements. First, it decided to extend the issue of temporary hotel permits for another year, to 31 October 2016. According to the appellant, this was because there were still many operators who had yet to submit their building plans to the appellant.

[19] Second, it was also decided that any new operator who was not in category or list 1 will be issued a temporary hotel permit on condition that the operator submits an application for planning permission or rezoning. But, this would only be for applications made before 1 November 2015. A payment of RM2,400 for the period 1 November 2014 to 31 October 2015 and another payment of RM2,400 for the period 1 November 2015 to 31 October 2016, will be imposed.

[20] Third, it was decided that enforcement action against lodging houses or hotels would be taken according to the following priority:

Phase 1 New lodging house/hotel without licence

Phase 2 Lodging house/hotel with no temporary permit and annual temporary permit payment not paid

Phase 3 Lodging house/hotel with annual temporary permit but has not submitted application for building plans to the appellant, action to be taken after the annual permit had expired

Phase 4 Lodging house/hotel where the application for building plans had been rejected by the appellant, action will be taken when the annual permit had lapsed

[21] It was the submission of the appellant that the same State Committee had further decided on 27 October 2015, that the proposed enforcement action for phase 4 was not applicable for cases or hotel activities which were not listed under the moratorium policy. It was the appellant's understanding that "where the planning permission had been rejected by the appellant, the temporary hotel permit would be revoked forthwith and all hotel activity should cease forthwith. No special consideration will be given to hotels or hotel activities which were not listed under the moratorium policy."

[22] In short, the benefit was only intended for those 191 operators who were already registered under the moratorium policy.

[23] The appellant further relied on the dialogues and briefings that it had organised from time to time and before the moratorium policy was launched, to show that the workings and basis of the policy were explained. The appellant claimed that it had also displayed two notices at its licensing department on 27 October 2015, the purport being to inform of the different operations of the policy.

[24] The respondents applied for a temporary hotel permit on 30 October 2015. On 1 November 2014, a temporary hotel permit valid for one year from 1 November 2015 to 31 October 2016 was issued subject to 12 conditions. Condition 11 required the respondents to submit and obtain the necessary planning permission. This meant that where the permission is not forthcoming or is refused, the appellant claimed that it was entitled to terminate the temporary permit as the basis for its grant "does not exist". The planning permission was refused on 19 April 2016 and conveyed to the respondents *vide* letter dated 21 April 2016. On 22 April 2016, the temporary permit was revoked.

[25] The appellant added that prior to applying for a temporary hotel permit, its licensing department had carried out investigations on 2 June 2015 and found the respondents operating without a licence. A subsequent investigation on 8 August 2015 showed similar activity. Two separate notices of violations of the Municipal Council of Penang Island (Trades, Business and Industries) By-Laws 1991, were issued to the second respondent. The appellant also received inquiries from lawyers acting for owners of various units of Block B where the second respondent's hotel was located, seeking confirmation that the hotel was licensed to carry out hotel operations. This subsequently culminated in a civil action brought by these owners against the respondents.

Decision Of The High Court

[26] The application was allowed. The High Court agreed with the respondents on all fronts. The High Court was *inter alia* satisfied that the temporary hotel permit, referred to as the "temporary licence" by the learned judge, was not issued to the respondents on the condition or

understanding that Jelutong Development Sdn Bhd successfully applied for a change of use of the land. The learned judge further found that the success or otherwise of an application for change of use of land was only relevant or was "a condition only for a permanent licence application by the applicants after the expiry of the temporary licence on 31 October 2016 and that it should not be a relevant consideration for the validity of an already granted and issued temporary licence." All that was required was that the respondents applied for a change of use of the land.

[27] According to the learned judge, it was not in dispute that when the temporary licence was issued, the category of use of the land upon which the respondents' hotel was built had yet to be changed. Consequently, when the temporary licence was terminated with six months' validity still to run, it was "definitely premature" and an "unjustifiable act as there was a legitimate expectation that the licence will run its course. The learned judge noted that the 17 technical departments of the State Government had not objected to the application, yet, there was the letter of rejection "without any fathomable reason".

[28] The learned judge also found that the respondents had not been accorded the right to be heard before the temporary licence was terminated, rendering the appellant in breach of the rules of natural justice. Specifically, the learned judge found that the media statement issued on 2 October 2015 by the executive councillor in charge of local government, traffic management and flood mitigation, clearly stated "that hotels which are on temporary licence but fails to obtain a change of use would not face any action until their temporary licence expires." It was the view of the learned judge that even though the change of use was rejected, "the validity period of the temporary licence should still be allowed to run its course until its natural expiry of the fixed term period on 31 October 2016. There was no necessity for the abrupt termination by the respondent since nowhere it is stated that a failure to obtain a change of use would result in an immediate termination of the temporary licence already granted to the applicants. By using the failure to obtain a change of use as a reason to terminate the temporary licence renders the action of the respondent as taking into account an irrelevant consideration that was never imposed as a condition when the temporary licence was granted in the first place."

[29] Aside from granting the orders sought, the learned judge ordered that damages and constitutional damages be assessed by the learned Senior Assistant Registrar.

Our Decision

[30] This appeal illustrates what can happen when policy decisions of public authorities wearing multiple hats of power and discretion are not thought through thoroughly before such decisions are made and issued out to the general public. The lack of clarity and a non-holistic approach creates

more problems than providing solutions, especially when it comes to the implementation and enforcement aspects of such decisions. Both the civil servants and public officers involved and the community to which the public authority serves must not be confused as to the intent, ambit and operation of the policy; more so where the public authority collects revenue from the community who rely on such decisions.

[31] Central to the appellant's case is the moratorium policy which was well intended, made in recognition of a stalemate situation that the State faced at the material time. This is evident from the affidavit-in-replies and submissions of the appellant. It seemed that there was an increasing number of unlicensed hotels or lodging houses in the State. Licensing was the mechanism by which the operations of such lodging houses could be controlled, regulated or supervised.

[32] In our view, the narrative background to and of the moratorium policy cannot supplant the fact that the arrangement that was put in place by the State Government and implemented by the appellant, is extra-legal. We have no issue with the submission of the appellant that the moratorium policy was put in place by way of directions issued by the State Authority pursuant to s. 9 of Act 171:

> (1) The State Authority may from time to time give the local authority directions of a general character, and not inconsistent with the provisions of this Act, on the policy to be followed in the exercise of the powers conferred and the duties imposed on the local authority by or under this Act in relation to matters which appear to the State Authority to affect the interests of the local authority area, and the local authority shall as soon as possible give effect to all such directions.

And, by the State Planning Committee pursuant to s. 4(5) of the Town and Country Planning Act 1976 [Act 172]:

> (5) The Committee may from time to time give to any local planning authority directions not inconsistent with the provisions of this Act and the local planning authority shall give effect to such directions.

[33] As aptly put by learned counsel for the appellant, the appellant, as a local authority, is empowered under the Local Government Act 1976 [Act 171] to regulate and control lodging houses and hotels through a licensing mechanism. This may be gathered from a proper reading of ss. 72, 102 and 107 of Act 171.

[34] Section 72 of Act 171 provides:

> 72. (1) A local authority shall have the power to do all or any of the following things, namely:
>
> (a) ...

(b) to establish, erect, maintain, let, **control and manage** markets and market buildings, **lodging houses**, houses, rooms or buildings kept for public refreshment, shops, and stands, **to control the occupation and the use thereof**;

(emphasis added)

[35] Towards that end, s. 102 of Act 171 provides the appellant a general power to make by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants or for the good order and government of the local authority area. Specifically, under s. 102(s), the appellant is empowered to make by-laws in respect of all or any of the following purposes:

(s) **to control and supervise, by** registration, **licensing** or otherwise, including in proper cases by prohibition, **a trade, business or industry** which is of an obnoxious nature or which could be a source of nuisance to the public or a class of the public;

(emphasis added)

[36] The Municipal Council of Penang Island (Trades, Business and Industries) By-Laws 1991 are the relevant by-laws as boarding houses and hotels fall within the list of trades and businesses in the First Schedule to the by-laws.

[37] Under s. 107 of Act 171, the local authority may prescribe fees to be paid for such licences or permits that it issues, and impose such conditions and restrictions for such licences or permits as the local authority thinks fit. While the licences and permits that are issued cannot be for a period of more than three years, such licences and permits are revocable by the local authority at any time without assigning any reason for that revocation:

Licences

107. (1) A local authority in the granting of any licence or permit may prescribe the fees for such licence or permit and the charges for the inspection or supervision of any trade, occupation or premises in respect of which the licence is granted.

(1A) Any licence or permit granted under this Act may be issued jointly with any other licence or permit.

(2) Every licence or permit granted shall be subject to such conditions and restrictions as the local authority may think fit and shall be revocable by the local authority at any time without assigning any reason therefor.

(2A) The revocation of any particular licence or permit issued jointly with any other licence or permit under subsection (1A) shall not affect the validity of any other licence or permit with which it had been jointly issued.

A (3) The local authority may at its discretion refuse to grant or renew any licence without assigning any reason therefor.

(4) A licence shall be valid for a period not exceeding three years.

[38] From the terms of Act 171, Act 131 and the Municipal Council of Penang Island (Trades, Business and Industries) By-Laws 1991 [the 1991 By-Laws], we observed that s. 9 of Act 171 and s. 4(5) of Act 131, respectively, are extensive enough to encompass the circumstances and purpose of policies such as the moratorium policy in question, so long as the directions issued are not inconsistent with the provisions of the relevant Act. Although the respondents do not dispute this and the validity of the directions was not challenged, we are compelled to make the following observations on the nature of the temporary hotel permits or licences that were issued.

[39] Act 171 envisages only licences of not more than three year duration being issued for lodging houses or hotels - see s. 107(4). Section 107 does not provide for the issuance of permits in place of licences nor does it contemplate the issuance of such licences or permits on a temporary basis; even those as long as the two years' duration as presented in the instant appeal. There is also nothing in the Business, Trade and Industry (Majlis Perbandaran Pulau Pinang) By-Laws 1991 that empowers the local authority to issue temporary permits or licences. Although these temporary permits may only be the nomenclature for licences, the same cannot be suggested for the temporariness of these permits. We are thus, more inclined to see these temporary hotel permits as in fact the "permanent" licences contemplated under s. 107 of Act 171, and by-law 3 of the 1991 By-Laws.

[40] We are further supported in our view by the fees imposed, that a sum of RM4,800 was imposed for a two year licence. The collection of these fees have implications that we will discuss shortly.

[41] We add that even if the temporary hotel permits are to be treated as temporary permits and nothing more, we nonetheless, substantially agree with the learned judge on his deliberations and findings.

[42] The respondents in this appeal had applied for a temporary hotel permit *vide* application in Form B on 29 October 2015. In fact, the respondents had, through Jelutong Development Sdn Bhd applied even earlier, on 13 August 2015 for a change of building use from 'commercial' to 'hotel'. The respondents' application form makes no reference to any moratorium policy or any statement issued, whether by the State Authority or the SPC. Together with that application is the respondents' agreement to accept an offer of a temporary hotel permit and to comply with the conditions imposed by the appellant.

[43] The temporary hotel permit was issued on 2 November 2015; and it is valid for the period 1 November 2015 to 31 October 2016. Again, this permit that we see makes no mention of any moratorium policy or any

statement issued, whether by the State Authority or the SPC. All that is expressed on the face of this temporary hotel permit, which under the Act 171 and By-Law 1991, must be displayed conspicuously, is that the licence, approved on 1 November 2015, is valid from 1 November 2015 and will expire on 31 October 2016. The receipt issued on 2 November 2015, confirmed that the payment of RM4,800 was for the temporary hotel permits from 1 November 2014 to 31 October 2016. This receipt, too, makes no mention that it is pursuant to the moratorium policy or to the statement of the SPC.

[44] Twelve terms and conditions of the temporary hotel permit were imposed by the appellant, namely:

1. Memasang 2 unit alat pemadam api (9 kg) jenis serbuk kering (dry powder fire extinguisher) dalam jarak setiap 15 meter laluan bangunan di setiap tingkat bangunan hotel.

2. Memasang loceng kebakaran (fire alarm) jenis manual pecah kaca (break glass) atau jenis automatik pengesan haba/asap bagi setiap satu unit dalam jarak 4.5 meter laluan bangunan dan juga di dalam setiap bilik hotel.

3. Memasang papan tanda keluar "KELUAR" jenis berlampu di setiap pintu akses utama bangunan hotel.

4. Memasang pelekat tunjuk arah keluar dari bangunan hotel.

5. Memasang lampu kecemasan (emergency light) yang mencukupi di tempat-tempat strategik untuk laluan kecemasan seperti laluan utama, akses tangga dan pintu masuk/keluar.

6. Semua pintu akses utama untuk laluan kecemasan tidak dibenarkan sama sekali dikunci dengan mangga (padlock).

7. Memastikan semua akses utama untuk laluan kecemasan bebas dari sebarang halangan.

8. Memasang pelekat "DILARANG MEROKOK" yang mencukupi di tempat-tempt strategik termasuk semua bilik hotel.

9. Menyediakan peti rawatan kecemasan (first aid Kit) yang sempurna dan mencukupi.

10. Menjaga dan menyelenggara premis hotel supaya sentiasa bersih dan bebas dari sebarang serangga-serangga pembawa penyakit berjangkit.

11. *Mengambil inisiatif untuk mengemukakan permohonan dan mendapat kelulusan merancang bagi tukar guna bangunan kepada premis hotel dan mematuhi syarat-syaratnya dalam tempoh setahun (01 November 2014 hingga 30 Oktober 2015).*

12. Mengutip fi kerajaan tempatan daripada penghuni hotel dan membayarnya kepada Majlis mengikut jadual pembayaran yang telah ditetapkan.

(emphasis added)

[45] As can be seen, 11 of the 12 conditions pertain to the regular operation of a lodging house. Condition 11 is the critical condition in contention. The appellant's argument is that it was the respondents' obligation to ensure that its application for planning permission and for change of use was successful. And, so when the planning permission was rejected on 19 April 2016 and conveyed to the respondents *vide* letter dated 22 April 2016, the appellant was entitled to revoke the temporary hotel permit that it had itself issued on 2 November 2015.

[46] We disagree. A reading of condition 11 does not yield up that reading. That condition reads:

> **Mengambil inisiatif** untuk mengemukakan permohonan dan mendapat kelulusan merancang bagi tukar guna bangunan kepada premis hotel dan mematuhi syarat-syaratnya dalam tempoh setahun (01 November 2014 hingga 30 Oktober 2015).
>
> (emphasis added)

[47] All that is required of the respondents is to, within one year, 1 November 2014 to 30 October 2015, "mengemukakan permohonan dan mendapat kelulusan merancang bagi tukar guna bangunan kepada premis hotel dan mematuhi syarat-syaratnya". This means that the respondents are to take the initiative to apply and obtain planning approval to change the use of the building to hotel premises and to comply with its conditions. These words do not mean or infer that the respondent is to apply and be successfully in its application for planning permission. The obligation of the respondents is in respect of having or taking the initiative of or taking steps towards applying and obtaining the planning approval. In fact, we are prepared to go as far as saying that the word "mendapat" or obtain here merely serves to emphasise the requirement of applying for the necessary approval.

[48] That obligation, however, cannot extend to the meaning suggested by the appellant, as that it quite outside the remit of the respondents. Since the respondents have applied for the planning approval, *albeit* through the developer, Jelutong Development Sdn Bhd, condition 11 has been satisfied. Jelutong Development Sdn Bhd's application was made on 13 August 2015 and it was for a change of building use from 'commercial' to 'hotel'. That application was made even before the moratorium policy was amended in October 2015. There is thus, no breach upon which the appellant may claim any basis for revoking the temporary hotel permit that it had issued on 2 November 2015.

[49] In any event, the appellant's letter of 22 April 2016 to the respondents must be read with its letter dated 21 April 2016 sent to Jelutong Development Sdn Bhd wherein the appellant advised the developers not only of its rejection of the application for planning approval, but that it had a right to appeal against that rejection:

3. Mengikut Seksyen 23(1)(a) Akta Perancangan Bandar & Desa 1976, seseorang pemohon kebenaran merancang yang terkilan dengan keputusan Pihak Berkuasa Perancang Tempatan **boleh membuat rayuan kepada Lembaga Rayuan dalam tempoh satu bulan dari tarikh keputusan itu disampaikan kepadanya**. Rayuan hendaklah dibuat dalam borang yang ditetapkan yang boleh didapati dari Jabatan Perancangan Bandar & Desa Negeri Pulau Pinang, Tingkat 57, KOMTAR, Pulau Pinang.

(emphasis added)

[50] That right of appeal was preserved for one month from the date of receipt of the decision. Even if the respondents are said to be in breach, and we do not see how that can be the case, with this statutory right of appeal under s. 23(1)(a) of the Town And Country Planning Act 1976 [Act 172], the revocation or termination of the temporary hotel permit with immediate effect was clearly premature and wrong in law and on the facts.

[51] Of particular significance is the fact that the temporary hotel permit was issued on payment of a sum required by the appellant and that the sum was specified to be payment for a fixed period of validity. The sum that was paid is significant in this sense. By-law 4 of the By-Laws 1991 provide that the fees payable for a licence "shall be as prescribed in the Third and Fourth Schedules hereof". The Third Schedule is applicable as it provides for fees of those trades and businesses specified in the First Schedule; and boarding houses and hotels fall under that First Schedule.

[52] Under the Third Schedule, the minimum rate for the annual fees payable for boarding houses and hotels is RM240 (up to 30 rooms) with every additional room chargeable at RM5 per room. There are 60 rooms at The Maritime Suites. Mathematically, that works up to RM240 + RM150 = RM390. The respondents paid RM2,400 per year, that would be ten times more than the minimum annual fee. In our view, the imposition and payment of this sum cannot be overstated. This sum represents the annual fee that is collected under by-law 4, there is no authorisation to collect any other fee. Hence, for all intents and purposes, as was pointed out earlier, the temporary hotel permit is as good as a permanent licence.

[53] Further, none of the 12 conditions provide nor is it stipulated in the temporary hotel permit that the permit will be revoked in the event of any breach or failure to comply with any of the stipulated conditions. While the revocation of a permit, including one that is temporary is a matter of enforcement under By-Laws 1991, we are of the view that the temporary hotel permit in this appeal cannot be terminated or revoked for the reasons relied on by the appellant.

[54] We are further of the view that having relied on the contents of the permit itself which permit was validly issued by the appellant upon payment of fees by the respondents, the respondents are legitimately entitled to expect

that the permit will live up to its contents. The appellant's decision revoking the respondents' temporary hotel permit is therefore wrong in law and on the facts.

[55] There is finally the submissions of the appellant, that the respondents did not fall into category or list 1 or 2, and that phase 4 as described above also did not apply to the respondents. The respondents were new applicants who applied after the window period, and against whom enforcement action could be taken immediately as they were outside the four phases explained. The appellant's argument, if we understand it correctly, is that there were 191 operators registered under the moratorium policy when it was first issued. Thereafter, despite been given time and relaxation of conditions under Act 172, there were still operators from within the 191 registered operators who had yet to apply for their planning permission and secure "permanent hotel licences". The moratorium policy was amended or extended to allow for this lot, who were within the 191 registered operators. Since the respondents were not or never within this group, the whole force of the law could be brought to bear on them.

[56] We cannot agree with this line of submission. It is not supported by the documents before the court; neither can it stand to reason that this 191 operators are to be singled out for favoured treatment. This line of argument also runs counter to the statement issued by the State Committee member, that the moratorium policy was amended and extended as the response was not encouraging, and that the enforcement actions will only be taken upon expiration of the permits granted. The following are the relevant parts of the statement issued:

> PROGRAM PEMULIHAN HOTEL TANPA LESEN
>
> Kenyataan Media YB Chow Kon Yew, EXCO Kerajaan Tempatan, Pengurusan Lalu Lintas dan Tebatan Banjir pada 2 Oktober 2015.
>
> Program Pemulihan Hotel Tanpa Lesen
>
> LATAR BELAKANG
>
> Kerajaan Negeri Pulau Pinang telah melancarkan program pemulihan hotel tanpa lesen pada awal 2014 bagi mengawal bilangan hotel yang beroperasi tanpa lesen di negeri ini. Tempoh pemulihan adalah dari Mac 2014 hingga ke 30 September 2014. Walaubagaimanapun sambutan adalah kurang menggalakkan.
>
> Jawatankuasa Pemulihan Hotel Tanpa Lesen kemudiannya telah membuat keputusan untuk memberi permit sementara selama satu tahun kepada hotel- hotel di bawah program pemulihan berkuatkuasa dari 1 November 2014 sehingga 31 Oktober 2015 dengan bayaran permit tahunan:
>
> (i) Rumah Tumpangan/Hotel: RM2,400 setahun
>
> (ii) Rumah Tumpangan Biasa/Dometry: RM1,200 setahun

Dalam usaha untuk membantu pengusaha-pengusaha hotel memperolehi lesen, Pihak Berkuasa Negeri telah memutuskan untuk memberi pengecualian/kelonggaran kepada hotel-hotel yang terletak di dalam zon "Perniagaan" iaitu:

(i) Pengecualian Permohonan Kebenaran Merancang

(ii) Pengecualian Laporan Heritage Impact Assessment (HIA) - digantikan dengan Heritage Impact Statement (HIS)

(iii) Menerima Tawaran Sumbangan Tempat Letak Kenderaan (TLK)

(iv) Kelonggaran syarat kebombaan (10 unit ke bawah)

Namun demikian, adalah didapati kebanyakan pengusaha-pengusaha hotel masih belum mengemukakan permohonan kepada PBT dan didapati juga terdapat pertambahan bilangan-bilangan hotel/rumah tumpangan tanpa kebenaran yang sedang beroperasi di Negeri Pulau Pinang.

ISU SEMASA

Mesyuarat MMK pada 30 September 2015 telah membuat keputusan bahawa program pemulihan hotel akan dilanjut selama satu tahun lagi dengan syarat- syarat berikut:

Kategori 1

Bagi pengusaha-pengusaha hotel yang berdaftar di bawah program pemulihan yang telah mengemukakan permohonan pelan kepada PBT pada atau sebelum 31 October 2015 adalah layak untuk memperbaharui permit sementara bagi tahun berikutnya (01 November 2015 - 31 October 2016) dengan kadar bayaran lama (RM2,400.00/RM1,200.00) mengikut kategori rumah tumpangan/hotel.

Kategori 2

Bagi pengusaha-pengusaha hotel yang masih belum mengemukakan permohonan pelan kepada PBT selepas tamat tempoh pemutihan pada 31 October 2015 akan dibenarkan memperbaharui permit sementara bagi tahun berikutan (01 November 2015 - 31 October 2016) tetapi bayaran dinaikkan 3 kali ganda iaitu RM7,200.00 / RM3,500.00 mengikut kategori rumah tumpangan/hotel.

CADANGAN TINDAKAN PENGUATKUASAAN

Tindakan penguatkuasaan terhadap rumah tumpangan/hotel tanpa lessen akan diambil mengikut keutamaan seperti fasa-fasa berikut:

(i) Fasa 1

Rumah Tumpangan/Hotel yang baru (Tidak disenaraikan di bawah program pemutihan hotel)

(ii) Fasa 2

Rumah Tumpangan/Hotel di bawah program pemutihan hotel dan tidak menjelaskan bayaran permit sementara tahunan (Tiada Permit Sementara)

(iii) Fasa 3

Rumah Tumpangan/Hotel yang baru di bawah program pemutihan hotel yang telah menjelaskan bayaran permit sementara tahunan tetapi tidak mengemukakan permohonan pelan kepada PBT akan diambil tindakan apabila permit tahunan sudah luput.

(iv) Fasa 4

Rumah Tumpangan/Hotel di bawah program pemutihan hotel yang telah menjelaskan bayaran permit sementara tahunan yang mana permohonan pelan telah ditolak oleh PBT akan juga diambil tindakan apabila permit tahunan sudah luput.

(emphasis added)

[57] We are in no doubt that the respondents qualify and fall within the extended group of operators for category 1 since they only paid the fees fixed for that category and not for category 2. This further explains why the respondents were issued the two-year temporary hotel permit.

[58] We are also convinced that the appellant had agreed not to take any enforcement action against the respondents until the permit had expired, or run its full duration. The respondents fall within the category of operators in phase 4. This is the proper and reasonable reading to be given to the appellant's moratorium policy which was intended to largely give unlicensed operators a window to regularise their trade, business or activity. Having responded to the State Authority's policy which was implemented by and through the appellant, and having taken advantage of the policy by making the necessary application and paying the requisite fees, the respondents are entitled to rely on the terms held out in the permit itself, that it is a permit for the duration specified therein. Where the planning permission is rejected, the temporary hotel permits must be allowed to run its period of validity and that it is only upon its expiration that the appellant can then take up and use its powers of enforcement under Act 171 or By-Laws 1991. Any other reading would render the operation of the moratorium policy and the provisions of the Acts in play, meaningless. As opined by the Court of Appeal in *Pembinaan Batu Jaya Sdn Bhd v. Pengarah Tanah dan Galian, Selangor & Anor* [2016] 5 CLJ 250, "where a person has some right or interest, or legitimate expectation of which it would not be fair to deprive him without a hearing or reasons given, then these should be afforded him accordingly, as the case may demand."

[59] Similar views were expressed in *Law Pang Ching & Ors v. Tawau Municipal Council* [2010] 2 CLJ 821; [2009] 3 MLJ 452. In that appeal, although that was a decision of the majority of the panel, the Court of Appeal was nevertheless unanimous in their appreciation of the "now well established doctrine of legitimate expectation", as expressed in the dissenting judgment of Gopal Sri Ram JCA:

[41] The starting point is *JP Berthelsen v. Director General of Immigration* [1987] 1 MLJ 134 where the Supreme Court held that a foreign national who was in this country by virtue of an employment pass had a legitimate expectation to receive procedural fairness before the cancelation of his pass by the relevant authority. The Court quoted with approval the following passage in the judgment of Lord Fraser of *Tulleybelton in Attorney General of Hong Kong v. Ng Yuen Shiu* [1983] 2 AC 629:

> Accordingly 'legitimate expectations' in this context are capable of including expectations which go beyond enforceable rights, provided they have some reasonable basis: see *Reg v. Criminal Injuries Compensation Board Ex parte Lain* [1967] 2 QB 864. So it was held in *Reg v. Board of Visitors of Hull Prison Ex parte St Germain (No 2)* [1979] 1 WLR 1041 that a prisoner is entitled to challenge, by judicial review, a decision by a prison board of visitors, awarding him loss of remission of sentence, although he has no legal right to remission, but only a reasonable expectation of receiving it.

[42] In *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1, the Federal Court held, *inter alia*, that the **doctrine of legitimate expectation had both a procedural and a substantive dimension**. In so doing, it expressly approved the approach adopted by Simon Brown LJ (now Lord Brown of Eaton-under-Heywood) in *R v. Devon County Council; ex parte Baker* [1995] 1 All ER 73 stated in the following terms:

> Sometimes the phrase (legitimate expectation) is used to denote a substantive right: an entitlement that the claimant asserts cannot be denied him. It was used in this sense and the assertion upheld in cases such as *R v. Secretary of State for the Home Department, ex p Asif Mahmood Khan* [1983] 1 All ER 40; [1984] 1 WLR 1337 and *R v. Secretary of State for the Home Department, ex p Ruddock* [1987] 2 All ER 518, [1987] 1 WLR 1482. It was used in the same sense but unsuccessfully in, for instance, *R v. Board of Inland Revenue, ex p MFK Underwriting Agencies Ltd* [1990] 1 All ER 91; [1990] 1 WLR 1545, and [1991] 3 Admin LR 265. These various authorities show that the *claimant's right will only be found established when there is a clear and unambiguous representation upon which it was reasonable for him to rely. Then the administrator or other public body will be held bound in fairness by the representation made unless only its promise or undertaking as to how its power would be exercised is inconsistent with the statutory duties imposed upon it. The doctrine employed in this sense is akin to an estoppel in so far as the public body's representation is communicated by way of a stated policy, this type of legitimate expectation falls into two distinct sub-categories: cases in which the authority are held entitled to change their policy even so as to affect the claimant, and those in which they are not*. An illustration of the former is *R v. Torbay BC, ex p Cleasby* [1991] COD 142; of the latter, *ex p Khan*.

A [43] In *R v. North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213, Lord Woolf CJ recognised that the doctrine of legitimate expectation may entitle persons affected to a substantive benefit. And, Lord Hoffman when delivering his speech in *R (Reprotech (Pebsham) Ltd) v. East Sussex CC* [2002] UKHL 8, approved Coughlan.

B (emphasis added)

[60] Thus, the respondents have rightly, a legitimate expectation that there will be observance of procedural fairness accorded to them, that the appellant will act fairly by taking into consideration all relevant factors, after having taken up the appellant on its moratorium policy. We are clear in that the C terms of the policy apply to the respondents. Even if there was any ambiguity, as we can see from the terms of phase 4 and the way the policy was revisited and extended, in all fairness and in the justice of the case, it must be resolved in the respondents' favour. Such doctrine is akin to the operation of estoppel, that while the policy may be changed from time to D time, insofar as this policy was concerned, when it was changed, it was to extend to operators such as the respondents who have relied on them, paid the fees fixed by the appellant and issued the permit, which on the face of it, says what it says, that it is valid till 31 October 2016.

[61] Absent any other offence or wrongdoing, the cancellation of the permit E itself cannot be any basis for the appellant to say that the respondents by virtue of the appellant's own act of revocation, is operating illegally. The cases cited by the appellant, *The State Government of Sabah v. Sipadan Dive Centre Sdn Bhd & Ors* [2013] 5 CLJ 107; [2013] 2 MLJ 793 and *Government of the State of Sarawak v. Lah Anyie & Ors* [2013] 6 CLJ 133, in fact, agree F with these fundamental principles; however, the doctrine was inapplicable on their peculiar facts.

[62] In this respect, we have one final observation to make. We are concerned with the argument of the appellant that because the temporary hotel permit has been revoked, and revoked by the appellant themselves, the G respondents are now in breach of the relevant laws for operating a hotel, without a permit. Authorities charged with such extensive powers and duties as we see under Act 171, Act 172, Act 133 and By-Laws 1991, cannot invoke those powers to the detriment of the community to which it serves. More so, when the authorities have received payment for such permits. The facts and H circumstances in this appeal, how the temporary hotel permits came to be issued and then revoked, reek of bad faith and wrongful use of those powers. These are clear and firm grounds for the invocation of the court's supervisory powers over such subordinate bodies, to grant the order of *certiorari* to quash the bad and wrongful decision made.

I **Conclusion**

[63] For all these reasons, the High Court was right in exercising its discretionary powers in allowing the respondents' application; the appellant's decision was clearly unfair, unreasonable and irrational under the

principles as laid down by Lord Diplock in the *locus classicus* of *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374; and followed in this country - see for instance the Court of Appeal decision in *Ngiam Geok Mooi v. Pacific World Destination East Sdn Bhd* [2016] 6 CLJ 395, *Abdul Ghani Che Mat v. Pengerusi Suruhanjaya Pasukan Polis & Ors* [2017] 3 CLJ 399. Such decision must thus be struck down.

[64] The appellant's authority under Act 171 and the other laws cited are never absolute; its exercise of powers and discretion are always subject to the scrutiny of the court. Local authorities such as the appellant are public bodies charged with power, discretion coupled with duties and responsibilities. Any power conferred by statute will always have limits - see *Pengarah Tanah dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135 where it was reminded that "it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably." Where the court finds the power wrongly exercised, it is our duty to intervene.

[65] Learned counsel for the respondents had suggested that his clients' case was akin to "swimming in bureaucracy". That despite taking steps to comply with the conditions set by the appellant and checking off the lists of matters to be attended to, the respondents were nevertheless constantly plagued and beset with problems. Having examined the circumstances, we are inclined to agree; hence our opening remarks on the need for clarity when issuing such policies. Any ambiguity must be resolved in the respondents' favour, especially where the respondents have been issued a two-year permit upon full payment of the amount stipulated by the appellant.

[66] The High Court was therefore right in its exercise of discretion in granting the order of *certiorari* to quash the decision of the appellant dated 22 April 2016. We see thus, no merits in the appeal and the appeal in respect of this part of the decision is dismissed.

[67] We note that the learned judge had ordered that damages be assessed. In its application for judicial review, the respondents had sought damages/ constitutional damages. The respondents were unable to provide any explanation on this relief. We are not prepared, even with the decision reached above, to affirm this part of the learned judge's decision. There was no basis for the grant of the order, especially since the respondents remained in the building and continued its operations until the expiration of the temporary hotel permit in October 2016. Under such circumstances, that part of the learned judge's decision must be set aside, and we do so accordingly.